



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1955 Western Apartments Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act of \$9,756.00; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, his Advocate, M.S. ("Advocate"), and an agent for the Landlord, L.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Agent said that the second evidentiary package the Tenant sent to her was late, but the Agent did receive and review it. I find that the Parties were served with each other's Application, Notice of Hearing and evidentiary submissions.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they

confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2012, with a monthly rent of \$700.00, due on the first day of each month. The rent at the end of the tenancy was \$803.00 plus \$10.00 for parking. The Parties agreed that the Tenant paid the Landlord a security deposit of \$350.00, and no pet damage deposit.

The Parties agreed that the tenancy ended when the Tenant vacated the rental unit on April 30, 2019. They agreed that the Tenant provided his forwarding address to the Landlord in writing on April 18, 2019.

The Advocate said that the Tenant's claim is because the Landlord served him with a Four Month Notice to End Tenancy for Renovation dated February 22, 2019 ("Four Month Notice"). The Advocate said that the Tenant accepted the Notice and moved out at the end of April 2019. However, the Advocate said that before he moved out, the Tenant gave the Landlord an RTB-28 form: "Tenant Notice: Exercising Right of First Refusal" dated April 18, 2019. She said the Tenant gave it to the Property Manager, J.A. The Advocate said that the Tenant asked J.A. if he could move back into the rental unit when the renovation was finished. The Advocate said that the amount claimed by the Tenant equals 12 months rent of \$813.00, because the Tenant was not provided with his right of first refusal on the rental unit.

The Agent said that the Four Month Notice was cancelled, and that no one in the building left, because of the Four Month Notice. The Agent said that the Four Month Notice was voided by another arbitrator in a decision dated May 6, 2019. The Agent

said that the Landlord and the Tenant ended this tenancy with a Mutual Agreement to End Tenancy. The Agent submitted a Mutual Agreement form dated April 18, 2019, with the Parties' signatures and an effective vacancy date of May 1, 2019 ("Mutual Agreement"). The Agent said that the Parties also entered into a Settlement Agreement dated April 18, 2019 ("Settlement Agreement"), in which the Landlord provided the Tenant with compensation for ending the tenancy mutually. The compensation included \$803.00, representing one month free rent for April 2019. The Landlord also agreed to pay the Tenant \$5,000.00 in this Settlement, in addition to returning the Tenant's \$350.00 security deposit.

The Agent said:

This is the compensation we offered, so that they would vacate. The Four Month Notice was voided by an arbitrator – see [RTB file number]. And I took some wording directly off the RTB site, which I included in my evidence package. This is from the Act – I put the link there. Tenants were under no obligation to take a buy out.

On the second page of the Settlement Agreement, the Tenant wrote the following:

I, [Tenant], would like to have the first opportunity to enter into a new tenancy agreement in respect to the rental unit (#210) where I currently reside once the repairs or renovations are complete. Please see my enclosed Tenant Notice: Exercising Right of First Refusal (# RTB-28), which I completed this April 18, 2019. [Tenant's signature]

The Advocate said:

I would start with first point – the dispute resolution for the Four Month Notice was cancelled. It was not for [the Tenant], because he never applied to dispute the notice. His name is not in there and not in the Decision cancelling this notice. He did not dispute his Four Month Notice, so he went by accepting it and accordingly, it follows with the right to exercise right of first refusal.

Second, when he was given the settlement package, the second page mentions about compensation. Initially, the extra compensation was in the amount of \$3,000.00, but it is very little money for the short period of time to find an apartment in the market place. 65 families had to move out. I helped him, and I know it was very difficult to find an apartment and to reach out to see apartments.

And he had to take time off from work. He has full time work to support himself, and had to take time off to view apartments. That's why he asked to increase the compensation, and he agreed to their offer of \$5,000.00. The one-month free rent was – [the Tenant] was entitled to that, because on April 1, he paid his rent and he moved out on April 30, so he was entitled to one month free rent based on the Four Month Notice. It is by law that he should get that back. That's point number five of the RTB Four Month Notice form.

Then the last page of the Settlement was signed with the note of [the Tenant] requesting to please exercise the right of first refusal, and both Parties agreed on that. So there's no way that he does not have the opportunity to get a new agreement with this building.

We are simple people and there are some legal terms here,. . . all we read made sense. We did not know that the Landlord mentioned that this would cancel our request for first right of refusal.

The Agent said:

If the reason that the Tenants vacated was due to the Four Month Notice, they would have vacated on June 30, not April 30. Nor would we have had to pay compensation, because it ended because he had accepted the Four Month Notice. There's a certain burden you have to meet with the Four Month Notice, and the \$5,000.00 compensation was above the burden of the Four Month Notice.

If they left because of the Four Month Notice, they would have left at that time; therefore, the Mutual Agreement was the document in question. Therefore, we were not entitled to offer the first right of refusal.

The Advocate said:

The Four Month Notice was due on June 30, but [the Tenant] couldn't wait until the last minute to get an apartment, if he wasn't going to dispute this Notice. He had to wait to see if Landlord was going to win the case, then he would be left with two weeks to find something. So that was a very, very short time. He moved out earlier, because he was trusting the decision. I have to move and find an apartment - it was almost double the price of rent he paid. He said okay, I'll just take this rent. He thought he could afford it – it's a big increase, though. The

compensation helped him for the moving fees, taking time off, and the transition into a new apartment. He has already used the compensation, so I don't think that was a very huge compensation.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

A right to exercise the right of first refusal in a tenancy occurs when a tenant is evicted pursuant to section 49(6)(b) of the Act – a Four Month Notice to End Tenancy for Renovations. However, this right does not occur when a Four Month Notice has been superseded by a different agreement to end the tenancy.

The evidence before me is that the Parties signed a Mutual Agreement to end the tenancy, and the Settlement Agreement, in which the Tenant was compensated \$5,803.00, in addition to receiving his full security deposit back. As the Landlord stated, the Tenant did not have to sign the Mutual Agreement or accept the compensation package; however, he did, and this type of compensation is not provided to a tenant who is subject to a Four Month Notice to End the Tenancy for Renovations.

Regardless of the Tenant's request to enforce a right to a first refusal, I find that the tenancy ended because the Parties executed the Mutual Agreement and the Settlement Agreement - both of which were signed by the Tenant. A party does not have the right to the first refusal of a renovated rental unit, unless the tenancy ends based on a Four Month Notice, pursuant to section 49(6)(b). However, I find that this tenancy ended based on the Mutual Agreement and Settlement Agreement, not the Four Month Notice. Accordingly, I find that the Tenant did not have a first right of refusal for the renovated rental unit.

I, therefore, dismiss the Tenant's Application wholly, without leave to reapply.

Conclusion

The Tenant is unsuccessful in his Application, because his tenancy ended due to a Mutual Agreement, not because of a Four Month Notice to End Tenancy for Renovation. The Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 04, 2021

Residential Tenancy Branch